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SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN,

PETITIONER,

v.

SHIRLEY COLLINS

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, and Supporting Brief

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No.——

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN, PETITIONER,

v.

SHIRLEY COLLINS

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, and Supporting Brief

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Julian N. Frisbie, Warden, State Prison of Southern Michigan, Jackson, Michigan, by Edmund E. Shepherd, Solicitor General of the State of Michigan, his counsel, respectfully prays for a writ of certiorari addressed to the United States Court of Appeals for the Sixth Circuit directing it to certify to this Honorable Court for review and determination the record in a certain cause, No. 11269, entitled "Shirley Collins, Appellant, v. Julian N. Frisbie, Warden, State Prison of Southern Michigan, Jackson, Michigan, Appellee." The transcript of the record in the case,

including the proceedings in the District Court of the United States for the Eastern District of Michigan, Southern Division, and in the Court below, is furnished herewith in accordance with the Rules of this Court.

I.

A Summary and Short Statement of the Matter Involved.[*]

On the 29th day of April, 1942 (22), following trial by jury in the circuit court for the county of Genesee, State of Michigan, Shirley Collins was duly convicted of murder in the first degree,[1] and sentenced to life imprisonment. Throughout such proceedings he had the benefit of counsel.

Eight years, ten months, and approximately 14 days thereafter, on the 14th day of March, 1950, the defendant (so designated for clarity), without first raising the question in any court of the State, filed in the District Court of the United States for the Eastern District of Michigan his petition (1-3) for a writ of habeas corpus,[2] on the ground that Michigan lacked jurisdiction to try him for a criminal offense, or hold him under the life sentence imposed, because prior to arraignment and trial he had been kidnapped by Michigan officers in the State of Illinois, brutally treated and transported in interstate commerce to the state of

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[*] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed transcript of record.

[1] Michigan Penal Code, § 316, CL 1948, § 750.316, Mich. Stat. Ann. (Henderson) § 28.548.

[2] 28 U.S.C., § 2254.

Michigan, contrary to the Lindberg Law,[3] and without appropriate proceedings in extradition.

From an order (11) denying the writ, the defendant duly appealed (12), and the United States Court of Appeals for the Sixth Circuit, in a judgment (13) entered the 28th day of May, 1951, reversed the judgment of the District Court and remanded the cause for further proceedings in accordance with an opinion (14-20) filed the same day, *Collins v. Frisbie*, 189 F. 2d 464, one judge dissenting (20), 189 F. 2d at 468.

The prevailing opinion held, in substance, (1) that where it is alleged in a petition for habeas corpus that petitioner had been illegally arrested and maltreated in Chicago, Illinois, by two Michigan police officers and he had thereafter been forcibly kidnapped by them and returned to Michigan and illegally imprisoned, the allegations of the petition charged a federal offense against state officers who kidnapped and abducted petitioner, and petitioner would be entitled to a hearing upon those allegations, and, in event averments were proved, to discharge; (2) that a State may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of a federal criminal statute; and (3) under *Darr v. Burford*, 339 U. S. 200, a previous denial of a petition for certiorari from this Court as a condition precedent to an application for writ of habeas corpus addressed to the district court is unnecessary *in this case*, because of such "exceptional circumstances" found to exist here as to require prompt federal action (20, note 1), 189 F. 2d at 468, note 1.

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[3] 18 U.S.C., § 1201.

And the Court, in note 1 (20), made the following suggestion:

> "We think, therefore, that the course of this case should not be arrested on technical, procedural grounds, but should be expedited by petition for certiorari to the Supreme Court (of the United States) for prompt review of our decision, if the highest tribunal deems it advisable to grant such petition. This would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

The dissenting opinion of Judge Miller was based on the ground it did not appear that the applicant had exhausted his state remedies, § 2254, Title 28, U. S. C., *Darr v. Burford, supra,* 339 U. S. 200, *Ex Parte Hawk,* 321, U. S. 114; that the petition contains no allegation explaining the delay from February 21, 1942, the date of arrest, to March 14, 1950, when the petition for habeas corpus was filed, makes no showing of "exceptional circumstances of peculiar urgency," and does not explain why the regular and ordered procedure in the State Court should not be followed before asking for federal intervention; the application came too late, since the point now raised was available as a defense in the state court trial, but was not there raised or relied upon by appellant. "Even if not treated as waived, it has not as yet been presented in any State court proceeding available to the applicant."

A petition (22) for rehearing and other relief, filed by the Solicitor General of the State of Michigan on the 15th day of June, 1951, was denied (29) June 25, 1951.

The petition for rehearing and other relief alleges in substance and effect that the defendant had never, in the

trial court, or in the Supreme Court of the State of Michigan, raised the point that the court of trial lacked jurisdiction because of illegal transportation from Illinois to Michigan without proceedings in extradition (22-29), although defendant had on numerous occasions raised other questions of alleged error, in mandamus proceedings, on application for leave to appeal, and in petition for writ of habeas corpus.

The Solicitor General sought (24) and was denied (29) an order affording him reasonable time to obtain and file exemplified copies of the records of the State Courts, granting a rehearing, and "in the alternative, that the order remanding the cause to the court below, provide that the District Judge, in carrying out the mandate of this Court be permitted to consider the question whether the petitioner for habeas corpus has exhausted his state remedies."

II

Statement Disclosing Basis of Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

This application for certiorari is made within the 90 days prescribed by law. Judgment was entered on the 28th day of May, 1951. A petition for rehearing was filed June 15, 1951, as required by Rule 28 of the 6th Circuit. It was denied on the 25th day of June, 1951. 28 U.S.C. § 2101 (c).

The court below has rendered a decision in conflict with decisions of other United States courts of appeals or other

circuit courts of appeals;[4] it has decided an important question of federal law in a way probably in conflict with applicable decisions of this court;[5] and it has decided an important question of federal law which, if it has not been, should be settled by this Court.

III

The Questions Presented.

1. Where a person accused of murder under process legally issued from a competent Michigan court, has been duly convicted and sentenced after trial by jury, with full benefit of counsel, must it be held, as the court below decided, that the jurisdiction of the Michigan trial court was rendered void ab initio by virtue of the manner in which such accused person had been transported by Michigan police officers from the state of Illinois into the state of Michigan by kidnapping in violation of a federal law, 18 U.S.C. § 1201, and is the prisoner so convicted of murder, subject to discharge some 8 years later on a writ of habeas corpus issued from a District Court of the United States?

2. Whether in the pending cause the applicant for a writ of habeas corpus from a federal district court, can be deemed to have "exhausted the remedies available in the courts of the State," 28 U.S.C. § 2254, or whether he has pleaded or proved exceptional circumstances of peculiar

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[4]

Bozel v. Hudspeth, 126 F. 2d 585, 588; Stamphill v. Johnston, 136 F. 2d 291, 292, cert. denied, 320 U.S. 760; and others cited in supporting brief.

[5]

Ker v. Illinois, 119 U.S. 436; Mahon v. Justice, 127 U.S. 700; In re Johnson, 167 U.S. 120, 126; and please see Annotation 165 ALR at 948 and decisions of this Court there cited.

urgency to require prompt federal action, *Darr v. Burford*, 339 U. S. 200, it appearing (22-29) that while Shirley Collins has sought relief in the Michigan courts by moving for new trial and seeking from the Supreme Court of Michigan leave to appeal, as well as writs of mandamus and habeas corpus, he has never in any of such state proceedings raised the question of the manner in which he now alleges he was transported by state police officers from Illinois to Michigan.

IV

Reasons Relied on for Allowance of Writ.

First: The United States Court of Appeals for the Sixth Circuit has rendered a decision in conflict with decisions of other United States Courts of Appeals or other Circuit Courts of Appeals.

Second: It has decided an important question of federal law in a way probably in conflict with applicable decisions of this Court.

Third: It has decided an important question of federal law which, if it has not been, should be settled by this Court.

Fourth: The United States Court of Appeals for the Sixth Circuit, in its opinion (20, note 1), 189 F. 2d 464, 468 (1), has most respectfully suggested that an application for writ of certiorari from this Court "would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

Fifth: The court below erred in holding that where it is alleged in a petition for habeas corpus to be issued from a federal district court, that petitioner had been illegally arrested and maltreated by two Michigan police officers and had thereafter been forcibly kidnapped by them and returned to Michigan and illegally imprisoned, in violation of federal law, 18 U.S.C. § 1201, petitioner, in event such averments were proved, would be entitled to discharge.

Sixth: The court below erred in holding that a State may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of 18 U.S.C. § 1201.

Seventh: The court below erred in holding in substance and effect, if not in express words, that the applicant for habeas corpus need not show that he had exhausted his state remedies, and in rejecting, on motion for rehearing, the State's claim that although the applicant for habeas corpus had sought appropriate relief in the courts of the State, he had not raised the question of jurisdiction of the trial court, in such state proceedings.

Eighth: The court below erred in holding that exceptional circumstances of peculiar urgency existed to require prompt federal intervention.

Ninth: The court below erred in reversing the judgment of the District Court of the United States for the Eastern District of Michigan.

Tenth: The court below erred in denying the petition (22) for rehearing and other relief.

Wherefore, your petitioner respectfully prays that this Court grant a writ of certiorari under 28 U.S.C. § 1254 (1),

and Supreme Court Rule 38, to be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit, to remove therefrom for review here the record in the cause therein pending, No. 11269, wherein your petitioner is appellee and the respondent is appellant, that the opinion and judgment of the United States Court of Appeals for the Sixth Circuit, and its order denying rehearing and other relief may be reviewed by this Court, and that the petitioner may have such other and further relief in the premises as to this Court may seem equitable and just.

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BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of Court Below.

The opinion of the court below is reported as *Collins v. Frisbie*, 189 F. 2d 464, and it appears in the printed transcript of record (14).

II

Statement of the Case.

A concise narration of proceedings and facts essential to a clear understanding of the questions presented, which require no repetition, will be found in the foregoing petition for certiorari under its first heading, *ante*, p. 2.

III

The Argument.

Point One

Power of a Michigan court of competent jurisdiction to try and upon conviction by jury punish the respondent for murder in the first degree, would not be destroyed if, as alleged, the accused had been seized in Illinois and forcibly transported in interstate commerce to Michigan by her police officers in violation of the Federal Kidnapping Act, 18 U.S.C. § 1201.

The authorities, based upon decisions of this Court, *infra*, collated in 165 ALR 947, recognize the universal rule "that where a person accused of crime is found within the territorial jurisdiction wherein he is so charged and is held under process legally issued from a court of that jurisdiction, neither the jurisdiction of the court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnapping, illegal arrest, abduction, or irregular extradition proceedings."

This Court in early opinions applied or otherwise approved the doctrine and has never overruled such decisions.

Ker v. Illinois (1886), 119 U. S. 436;

Mahon v. Justice (1888), 127 U. S. 700;

Cook v. Hart (1892), 146 U. S. 183;

Lascelles v. Georgia (1893), 148 U. S. 537;

In re Johnson (1897), 167 U. S. 120;

Adams v. New York (1904), 192 U. S. 585;

Pettibone v. Nichols (1906), 203 U. S. 192.

And, with the recent exception of the court below,[6] United States courts of appeals and circuit courts of appeals, in the vast majority of cases, have adhered to the principle that the presence of an accused within the territorial limits of the court wherein he is charged (sometimes state, sometimes federal), gives such a court complete jurisdiction over the defendant's person regardless of how his presence was secured.

Bozel v. Hudspeth (1942), 126 F. 2d 585, 588;

Stamphill v. Johnson (1943), 136 F. 2d 291; cert. denied, 320 U. S. 766;

McMahan v. Hunter (1945), 150 F. 2d 498; cert. denied, 326 U. S. 783;

Sweet v. Howard (1946), 155 F. 2d 715, 717;

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[6]

Cf. Robinson v. United States, 144 F. 2d 392, involving the Removal Statute, 18 U.S.C. § 591, and holding that the presence of the defendant in the District Court of trial gave it complete jurisdiction over his person, regardless of how his presence was secured.

Chandler v. United States (1949), 171 F. 2d 921, 934; cert. denied, 336 U. S. 918;

Pierce v. Smith (1949), 175 F. 2d 193;

Gillars v. United States (1950), 182 F. 2d 962, 972.

Thus becomes apparent the conflict between the decision of the court below in the pending cause, and those of other circuits.

While, as correctly noted by the lower court (18), federal law now prescribes punishment for whoever knowingly transports in interstate commerce any person who has been kidnapped, 18 U.S.C. § 1201, and though it exacts the penalty of death whenever maltreatment of the victim is established, it does not necessarily follow, when state police officers forcibly transport against his will an accused person into the territorial confines of a court wherein he is lawfully charged with murder, that consequently the respondent becomes constitutionally immune from prosecution; and certainly no federal statute, including the Kidnapping Act, *supra*, maps procedure to restore the guilty party to the asylum state.

It should go without saying that, if defendant's allegations of fact (2-4) were true, Michigan would never condone the course of misconduct pursued by over-zealous police officers, but this does not mean that if the Federal Kidnapping Act were so violated, the convicted offender against Michigan's law must go free.

If because of acts of Michigan police officers, in violation of federal law, the Michigan trial court forfeited jurisdiction over his person, and should the District Court be required to release him on habeas corpus, Shirley Collins could never be retried and punished for murder until he

voluntarily returns to the asylum state of Illinois there to await extradition proceedings; and since there exists no authority under federal or state law to compel such action, he could escape the consequences of his crime by the simple expedient of remaining in Michigan. We doubt very much that the Congress intended such consequences to flow from a violation of the statute, or that this Court would be inclined to place so loose a construction upon a law designed "to assist the states in stamping out this growing and sinister menace of kidnapping," *Chatwin v. United States*, 326 U. S. 455, 463. Clearly, we think, the Federal Kidnapping Act was not passed for the purpose of strangling the exercise of state sovereignty in bringing criminals to justice. And the penalty of death for the individual suffices to maintain the integrity of federal authority.

We, therefore, respectfully submit that the question presented is of sufficient importance to justify this Court in opening its doors to the State of Michigan.

Point Two

The applicant for habeas corpus has not exhausted his state remedies, nor has he pleaded or proved existence of exceptional circumstances of peculiar urgency which require prompt federal intervention.

The petitioner in *Darr v. Burford, Warden*, 339 U. S. 200, a state prisoner, applied to a Federal District Court for habeas corpus and was denied the writ for his "omission to apply here for certiorari from the state court's denial of habeas corpus." This Court, deeply concerned, held, upon authority of *Ex Parte Hawk*, 321 U. S. 114, that ordinarily an application for habeas corpus by one detained under a state court judgment of conviction for crime will

be entertained by a federal court only after all state remedies available, including all appellate remedies in the state courts, have been exhausted and review has been denied by this Court, and that in § 2254 of the 1948 recodification of the Judicial Code, Congress accepted the rule of the *Hawk* case as a sound rule to guide consideration of habeas corpus in federal courts.

Further, it was decided, p. 219, the petitioner had not sustained the burden of showing that circumstances of peculiar urgency existed to require prompt federal intervention.

1. The narrow and perplexing question involved in *Darr v. Burford, supra,* is not here presented for consideration, for in the case at bar the applicant for habeas corpus has taken advantage of no remedy offered him by the State of Michigan.

As recognized by this Court,[7] as well as the United States Court of Appeals for the Sixth Circuit,[8] Michigan's corrective process where claims of constitutional infringement are made, comprises a delayed motion for new trial and in the event of an adverse decision, an application for leave to appeal to the state's highest court. But the defendant did not choose to exercise that privilege for the purpose of asserting his present contention.

In his petition for habeas corpus (1-3), filed in the Federal District Court 8 years after his conviction for murder, Collins fails to allege that he had a trial by jury, with full

[7]
De Meerleer v. Michigan, 329 U.S. 663.

[8]
Whalen v. Friable, 185 F. 2d 607.

benefits of counsel, or that he raised a challenge to the trial court's jurisdiction, or that he moved for a new trial on that ground, or that he appealed to the Michigan Supreme Court on the basis of official violation of the Federal Kidnapping Act.

It appears from the petition (22-25) for rehearing and other relief, filed in the court below, however, that Shirley Collins has never by motion for new trial or otherwise raised in the courts of Michigan the question of jurisdiction presented in his petition for haeas corpus (22).

It further appears (23) that although Collins has on several occasions applied to the Supreme Court of the State of Michigan for writs of mandamus, for leave to appeal, and for a writ of habeas corpus, he has never invoked these remedies on the ground that the trial court lacked jurisdiction to try him for the criminal offense of murder, by virtue of the alleged fact that he had been kidnapped by Michigan police officers and transported in interstate commerce contrary to Federal law. A complete summary of such state proceedings will be found in the printed transcript of the record (23-29).

2. We respectfully submit that in the circumstances disclosed by the record it cannot be said that the defendant Collins has met the burden of pleading or proving the existence of exceptional circumstances of peculiar urgency which require prompt federal intervention, *Darr v. Burford, supra*, 339 U. S. 200.

Surely when, as in this cause, an accused person neglects through his counsel promptly to raise the question of jurisdiction in the initial stages of his prosecution, or during the course of his trial by jury, or in a motion for new trial, or on appeal to the State Supreme Court, and when, as

here, he allows 8 years to elapse before asserting such a claim, there exists no emergency.

3. There remains our duty to inform the Court, although the fact does not appear in the present record, that upon remand of this cause from the court of appeals to the district court, a hearing was held, witnesses were produced, testimony was given on both sides, and the issue of fact, whether the police officers kidnapped Collins and transported him into the state, is about to be resolved by the federal court.

This does not, however, we respectfully submit, render moot the questions here presented, for it is our position that the District Court is without power or authority to resolve such issues of fact unless or until it clearly appears that all state remedies have been exhausted by the defendant.

In short, it is our firm belief that the vital question before this Court at the present time, involves Michigan's sovereignty exercised in bringing to justice persons accused of criminal offenses, and in providing adequate remedies for the correction of errors committed by her courts.

Unless Michigan is to lose such sovereign powers entirely, it is for her courts to resolve the issues of fact in this case.

IV

Conclusion.

We would in conclusion emphasize the importance of this case. It reveals a conflict in decisions of courts of appeal; the court below has decided an important question

of federal law in a way probably in conflict with applicable decisions of this Court; if such a question is open here, it should be decided; and finally, our application for certiorari seems to the court below (20) to be "the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

We, therefore, respectfully pray that the writ of certiorari issue herein.

Respectfully Submitted,

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